



Legislative Affairs

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February 9, 2009

Courtney Feeley Karp
Massachusetts Department of Energy Resources (DOER)
100 Cambridge Street, Suite 1020
Boston, MA 02114

Re: *Green Communities Act* proposed final regulations – 225 CMR 14.00 – RPS I and 225 CMR 15.00 – RPS II

Dear Ms. Karp;

Mass Audubon appreciates this opportunity to comment on the proposed final regulations 225 CMR 14.00 and 15.00 for Class I and II of the Renewable Portfolio Standard defined in *The Green Communities Act* (Ch. 169 of the Acts of 2008, the “Act”). Recognizing the escalating threat to biodiversity, including humans, posed by fossil fuel consumption, and the environmental degradation brought about by extraction, Mass Audubon strongly supports the development of renewable energy resources as required by the Act. As Massachusetts moves towards increased renewable energy production, it is critical that renewable energy facilities, including new hydroelectric facilities or improvements on existing facilities, biomass facilities, or wind facilities do not exacerbate the impact of climate change and other threats to the ecosystem. As such, we were very pleased to see Low Impact Hydropower Institute (LIHI) requirements in the proposed final regulations. Overall, it is our opinion that the proposed final regulations will help ensure that hydropower facilities comply fully with the *Act* and put in place reasonable safeguards to prevent significant environmental degradation while providing incentives for development of renewable energy sources.

The following comments are submitted in relation to Renewable Portfolio Standard (RPS) eligibility criteria for Class I and II hydropower and biomass. We recommend that biomass facilities only qualify for RPS credits to the extent their operations are carbon-neutral and meet other criteria to protect ecosystem service values of Massachusetts forests including but not limited to carbon sequestration capacity.

In regards to wind and the initiatives before the legislature that seek to consolidate wind permits and route decisions to the Energy Facilities Siting Board, we recommend that only wind facilities that meet wind siting criteria as set by the yet to be finalized legislation, if passed, and regulation meet the RPS. We propose that wind facilities which do not meet the environmental criteria which allow for permit fast-tracking should not be eligible for the RPS.

Hydropower

Per our stakeholder response comments dated October 31, 2008, we are pleased to see that facilities are required to meet “appropriate and site-specific standards...”, including the standards developed by the Low Impact Hydropower Institute (LIHI). LIHI certification provides a high level of consistency and expertise.

We have the following recommendations to the proposed final regulations:

1. 225 CMR 14.02 and 15.02, Class I and II definitions.
 - a. Impacted Watershed. Consistent with our earlier comments, we continue to suggest that the current definition be expanded to include land areas, as well as water bodies, *impacted* vs. *impounded*, by a hydroelectric facility. Upstream flooding and bank erosion, and downstream starving, scouring, and erosion, as well as blockage of the movement of aquatic organisms give hydropower a very significant environmental footprint beyond just the water bodies. In addition, there are facilities which do not result in impoundment, but do have impacts. An example of this is the powering of in-pipe turbines from reservoirs and the upstream impacts from water drawdown. We also suggest inserting the word “may” between “which experience”, as this will allow for assessment and action prior to impact.
 - b. Marine or Hydrokinetic Energy. There may be an unintentional outcome of the current definition, which as written would allow for impoundment in oceans, estuaries and tidal areas. We suggest that the definition be changed to reflect that water not be impounded, diverted, or dammed for fresh, estuarine, and marine water. The definition as written may provide an out for freshwater hydroelectric facilities in reservoir pipes or other atypical structures that still may have both upstream and downstream consequences (e.g. reservoir releases to power in-pipe turbines). As written, it appears that there is no agency review of these types of projects.
 - c. Relevant Hydroelectric Agency. The relevant resources agencies referenced in the regulations may better be called that, “Relevant Resource Agencies”, as their responsibility is resource protection. Calling them Hydroelectric Agencies puts the power resource before their other primary responsibilities.
2. 14.05 and 15.05 Eligibility Criteria for RPS Class I Class II Hydroelectric
 - a. 14.05 and 15.05 (1)(a)6.d.f **LIHI Determination**. As written, the Department makes the final determination as to whether or not a unit meets the appropriate standards. We suggest that the Department, in consultation with the Relevant Hydroelectric Agencies, makes the determination.
 - b. 14.05 and 15.05 (1)(a)6.d.g **Third party certification**. This section deals with facilities that are outside of the LIHI area. We suggest that the third party certification be acceptable to the Department *and* the Relevant Hydroelectric Agencies, as this would bring in the Department of Fish and Game, the agency with the best capacity to assess third party certification in regards to river and fisheries health.

Wind

As written, all wind is eligible for Class I and II RPS. We suggest that as siting criteria and standards are developed via the Green Communities Siting Commission and in conjunction with relevant agencies, the regulations be updated to provide a framework for evaluating wind projects that includes avoidance, minimization, and mitigation of environmental, safety, and noise impacts. If DOER develops regulations, we ask that there be a standard rule-making process without emergency regulations, giving ample opportunity for public input.

Biomass

An analysis is needed regarding the net carbon effects of biomass facilities in Massachusetts, and this needs to be factored into the RPS standards and the Massachusetts Biomass Strategic Initiative¹. Please see our earlier letter for additional information.

Our specific comments on the regulations are as follows:

225 CMR 14.02 and 15.02, Class I and II definitions.

Eligible Biomass Fuel. The definition should clarify that only sustainable harvested wood as Forest Stewardship Council or equivalent certified, is eligible.

In addition, we suggest that there is an additional caveat for RPS eligibility that requires the state to review projects in the context of the net carbon effect of the facility.

Conclusion:

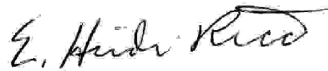
Mass Audubon applauds DOER for requiring site specific and LIHI criteria for hydroelectric units. We also recommend that the DOER develop specific criteria and standards for wind and biomass to ensure they meet the highest environmental protection standards; and the development of renewables should not be allowed to undermine the primary conservation purposes for which the lands were acquired. As we recommended in our earlier comments, we also recommend that DOER carefully evaluate the actual net carbon effects of biomass and implications for forest sustainability and forest related ecosystem service values including carbon sequestration in considering criteria for biomass eligibility under the RPS. Furthermore, the Commonwealth's policy, regulations, and plans for biomass and for forestry on public and private lands need to be coordinated in a coherent manner.

Thank you again for the opportunity to provide these comments. Please contact us with any questions.

Sincerely,



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cc: Bob O'Connor, EEA Director of Land Policy
DCR Commissioner Richard Sullivan
DFG Commissioner Mary Griffin

Protecting the Nature of Massachusetts